



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

ELP

Docket No. 5007-99

18 October 1999

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10, United States Code, Section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 14 October 1999. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that you enlisted in the Marine Corps on 10 August 1972 for three years at age 23. The record reflects that you were advanced to PFC (E-2) and served without incident until 2 April 1973 when you received a nonjudicial punishment (NJP) for two brief periods of unauthorized absence (UA) totalling about two days.

On 3 July 1974 you were convicted by special court-martial of three periods of UA totalling 212 days, from 14 August 1973 to 13 February 1974, 28 February to 14 March and 6-22 May 1974. You were sentenced to confinement at hard labor for 105 days, forfeitures of \$150 per month for four months, and reduction to PVT (E-1). The convening authority approved the sentence but suspended the forfeitures in excess of three months for a period of six months. On 28 August 1974, the convening authority suspended part of the sentence to confinement.

You were reported UA again on 30 August 1974 and you remained absent until you surrendered to military authorities on 23 March 1975. On 24 April 1975 you submitted a request for an undesirable discharge for the good of the service in lieu of trial by court-martial for the foregoing 205 day period of UA. In a separate statement, you asserted that you did not want to return to duty and if you had to go to court, you would request a bad conduct discharge. You stated that you wanted to be discharged because you felt that you would be able to help your family better if you were at home. You claimed that your attitude towards the Marine Corps had soured, and you would not be of further use to the service. You did not mention any extenuating factors such as medical or family problems at home. Prior to submitting your request you conferred with a qualified military lawyer at which time you were advised of your rights and warned of the probable adverse consequences of accepting such a discharge. Thereafter, the discharge authority approved the request and you were discharged under other than honorable conditions on 22 May 1975.

In its review of your application the Board carefully weighed all potentially mitigating factors such as the fact that it has been more than 24 years since you were discharged. The Board noted your contention that you went UA because of your mother's health. You state that the Marine Corps denied you leave because Red Cross verification of your mother's illness could not be obtained. You went UA and remained absent until she underwent open heart surgery and returned when her condition became stable. However, her operation was not totally successful and you kept going UA until her demise, at which time you requested discharge.

The Board concluded that the foregoing factors and contentions were insufficient to warrant recharacterization of your discharge given your record of an NJP, special court-martial conviction, and the fact that you accepted discharge rather than face trial by court-martial for a 205 day period of UA. Your lost time due to UA and military confinement totalled more than 20 months. The Board is always sympathetic to individuals with family problems and understands the effect they have on individual morale and performance. However, your contentions are neither supported by the evidence of record nor by any evidence submitted in support of your application. You have provided no evidence of any circumstance which justified the prolonged period of your last UA or prevented you from returning to military jurisdiction earlier than you did. It appeared to the Board that you were fortunate that the special court-martial did not award a punitive discharge given that one of the three periods of UA was for more than six months. The Board also believed that considerable clemency was extended to you when your request for discharge to avoid trial by court-martial was approved since, by this action, you escaped the

possibility of further confinement at hard labor and a punitive discharge. Further the Board concluded that you received the benefit of your bargain with the Marine Corps when your request for discharge was granted and you should not be permitted to change it now. Given all the circumstances of your case, the Board concluded your discharge was proper and no change is warranted. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director